

PT 99-42

Tax Type: PROPERTY TAX

Issue: Charitable Ownership/Use

**STATE OF ILLINOIS
DEPARTMENT OF REVENUE
OFFICE OF ADMINISTRATIVE HEARINGS
CHICAGO, ILLINOIS**

**CHICAGO AND NORTHEAST ILLINOIS
DISTRICT COUNCIL OF CARPENTERS
APPRENTICE and TRAINEE PROGRAM,
APPLICANT**

v.

ILLINOIS DEPARTMENT OF REVENUE

**Nos. 98-PT-0057
(90-16-0624)
(91-16-0838)
(92-16-1120)
(93-16-1257)
(94-16-1440)
(95-16-1207)
(96-16-0968)**

**Real Estate Tax Exemptions
For Tax Years 1990 through
and including 1996**

P.I.N: 08-34-200-019

Cook County Parcel

**Alan I. Marcus
Administrative Law Judge**

RECOMMENDATION FOR DISPOSITION

APPEARANCES: Mr. Gary Weintraub, attorney, on behalf of the Chicago and Northeast Illinois District Council of Carpenters; Mr. Mark Dyckman, Special Assistant Attorney General, on behalf of the Illinois Department of Revenue.

SYNOPSIS: This matter comes to be considered pursuant to a stipulation entered into by the Chicago and Northeast Illinois District Council of Carpenters (hereinafter the "applicant") and the Illinois Department Of Revenue (hereinafter the "Department"). The parties entered into this stipulation after the appellate court issued its decision in Chicago & Northeast Illinois District Council of Carpenters v. Illinois Department of Revenue, 293 Ill. App. 3d 600 (1st Dist.

1997), *leave to appeal denied*, April 1, 1998 (hereinafter "Carpenters"), wherein the court held that real estate identified by Cook County Parcel Index Number 08-34-200-019 (hereinafter the "subject property") did not qualify for exemption from 1989 taxes under Section 19.1 of the Revenue Act of 1939, Ill. Rev. Stat. ch. 120 ¶ 482 *et seq.*

At issue herein is whether the subject property should be exempt from real estate taxes for assessment years 1990 through and including 1996 under the statutory provisions which exempt "property of schools"¹

The underlying controversy arises as follows:

Applicant filed a series of Real Estate Tax Complaints with the Cook County Board of (Tax) Appeals (hereinafter the "Board").² The Board reviewed these complaints and subsequently recommended to the Department that exemptions be granted for the 1990, 1991 and 1992 tax years but that "no action" be taken on the remaining complaints due to pending litigation. After examining these recommendations, the Department issued a series of determinations which found that the subject property was not in exempt ownership and not in exempt use during all of the tax years in question.³

Applicant filed timely requests for hearing as to all of the denials. Before the Department could convene appropriate hearings, the appellate court issued its decision in the Carpenters case.

1. For tax years 1990 through 1992, those provisions are contained in Section 19.1 of the Revenue Act of 1939, Ill. Rev. Stat. ch. 120 ¶ 482 *et seq* ; for tax year 1993, those provisions are contained in Section 19.1 of the Revenue Act of 35 **ILCS** 205/1 *et seq*; for tax years 1994 through and including 1996, those provisions are Section 15-35 of the Property Tax Code, 35 **ILCS** 200/1 *et seq.* See, People ex. rel. Bracher v. Salvation Army, 305 Ill. 545 (1922). (Issue of property tax exemption necessarily depends on the statutory provisions in force during the time for which the exemption is claimed).

2. For exact filing dates, *see*, Dept. Group Ex. No. 1.

When that decision became final, applicant elected to enter into the aforementioned stipulation and present oral argument thereon. Following careful review of that stipulation, its supporting documentation and the oral arguments in furtherance thereof, I recommend that all of the Department's exemption denials be affirmed.

FINDINGS OF FACT:

1. The Department's jurisdiction over these matters are established by the admission of Dept. Group Ex. Nos. 1, 2, 4 and 5.
2. The Department's position in this matter is that the subject property, located at 1256 Estes Ave, Elk Grove Village, IL 60007 and identified by Cook County Parcel Index Number 08-34-200-019, was neither in exempt ownership nor in exempt use during each of the seven tax years currently in question.⁴ Dept. Group Ex. Nos. 3 and 4.
3. Applicant and the Department (hereinafter collectively referred to as the "parties") have stipulated that the facts set forth in the Carpenters case, a true and correct copy of which is attached hereto and incorporated by reference herein, remained unchanged throughout the tax years presently at issue except for the curriculum updates submitted as Applicant Ex. No. 6 and the budget information submitted as Applicant Ex. Nos. 7-13. Stipulation, pp. 2-3; Tr. p. 7.

3. For exact determination dates and other details about the determinations, *see*, Dept. Group Ex. No. 4.

4. Those tax years are, in respective order, 1990, 1991, 1992, 1993, 1994, 1995 and 1996. Dept. Group Ex. No. 1.

4. Based on the above, I hereby take administrative notice of, and therefore adopt, all findings of fact set forth in Carpenters, *supra*, at 603-605, as findings of fact in this case.
5. The parties have further stipulated to the admission of certain curriculum updates and budget information. The curriculum updates provide that applicant's pre-apprentice training program lasted nine weeks throughout all of the tax years currently at issue. They further state that this program, which applicant offered at the subject property, provided instruction in the following areas during that time:

NAME OF COURSE	NAME OF COURSE
<u>Carpentry -Related Information:</u> <ul style="list-style-type: none"> • Background • Nomenclature/terminology • Safety 	<u>O.S.H.A. (10 hour class):</u> <ul style="list-style-type: none"> • Brief history of O.S.H.A. • Rights and responsibilities of employers and employees • Hazardous construction areas
<u>Carpentry-Shop:</u> <ul style="list-style-type: none"> • Safe work practices for deck, concrete formwork, wall and roof framing • Siding basics • Metal studs • Drywall 	<u>Other Safety Training:</u> <ul style="list-style-type: none"> • Hazard Communications • Fall protection in accordance with O.S.H.A. Subpart M regulations • Power Actuated Tools
<u>Mathematics:</u> <ul style="list-style-type: none"> • Fractions and decimals • Reading a rule • Computations involving measurements • Geometric shapes • Perimeters and areas 	<u>Labor-Management Relations:</u> <ul style="list-style-type: none"> • Working relationship between labor and management • Worker's rights • Employer's rights
<u>Residential Print Reading:</u> <ul style="list-style-type: none"> • Symbols and abbreviations • Scaling Practices • Drawing Conventions • Plans, Elevations, Details and Sections • Specifications • How to find needed information 	

Applicant Ex. No. 6.

6. The budget information demonstrates the Chicago Board of Education (hereinafter the "CBE") incurred the following expenses by offering a carpentry-apprentice program at Washburne Trade School (hereinafter "Washburne"):

SCHOOL YEAR	TOTAL EXPENSE
1990-1991	\$195,219.00
1991-1992	\$224,460.00
1992-1993	\$ 98,476.00
1993-1994	\$ 91,650.00
1994-1995	\$106,887.00
1995-1996	\$ 0.00
1996-1997	\$ 0.00
TOTAL	\$716,692.00

Applicant Ex. Nos. 7-13.

7. The CBE did not incur any expenses for the carpentry apprentice program during the 1995-1996 and 1996-1997 school years because those years represented the culmination of a process, begun in 1991, wherein the CBE terminated all pre-apprentice training at Washburne. Administrative Notice of facts set forth in Carpenters, *supra*, at 605.
8. Applicant began offering pre-apprentice training at the subject property in 1989. It continued offering that training while the Washburne program was being phased out and became solely responsible for providing same after the 1991 school year. *Id.*

CONCLUSIONS OF LAW:

An examination of the stipulation and supporting evidence establishes that applicant has not submitted evidence and argument sufficient to warrant exempting the subject property from real estate taxes for tax years 1990 through and including 1996. Accordingly, under the reasoning given below, the Department's determinations finding that said property does not

satisfy the exemption requirements set forth in the applicable statutes should be affirmed. In support thereof, I make the following conclusions:

Article IX, Section 6 of the Illinois Constitution of 1970 provides as follows:

The General Assembly by law may exempt from taxation only the property of the State, units of local government and school districts and property used exclusively for agricultural and horticultural societies, and for school, religious, cemetery and charitable purposes.

The power of the General Assembly granted by the Illinois Constitution operates as a limit on the power of the General Assembly to exempt property from taxation. The General Assembly may not broaden or enlarge the tax exemptions permitted by the Constitution or grant exemptions other than those authorized by the Constitution. Board of Certified Safety Professionals v. Johnson, 112 Ill. 2d 542 (1986). Furthermore, Article IX, Section 6 is not a self-executing provision. Rather, it merely authorizes the General Assembly to confer tax exemptions within the limitations imposed by the Constitution. Locust Grove Cemetery of Philo, Illinois v. Rose, 16 Ill. 2d 132 (1959). Moreover, the General Assembly is not constitutionally required to exempt any property from taxation and may place restrictions or limitations on those exemptions it chooses to grant. Village of Oak Park v. Rosewell, 115 Ill. App. 3d 497 (1st Dist. 1983).

Pursuant to its Constitutional mandate, the General Assembly enacted the Revenue Act of 1939, Ill. Rev. Stat. ch. 120 ¶ 482 *et seq.* (hereinafter the "Act") which was subsequently recodified at 35 ILCS 205/1 *et seq.* The Act was then repealed and replaced by the Property Tax Code, 35 ILCS 200/1 *et seq.*, which took effect January 1, 1994. *See*, repealer provisions contained in 35 ILCS 200/32-20.

There are no substantive differences in applicable provisions of the Act and the Code, at least for present purposes. Moreover, any technical differences therein do not affect the outcome of this case. Therefore, in the interest of brevity, I shall cite to Section 15-35 of the Code, which states in pertinent part that:

All property donated by the United States for school purposes and all property of schools, not sold or leased or otherwise used with a view to profit, is exempt [from real estate taxation], whether owned by a resident or non-resident of this State or by a corporation incorporated in any state of the United States. Also exempt is:

(b) property of schools on which the schools are located and any other property of schools used by the schools exclusively for school purposes, including, but not limited to, student residence halls, dormitories and other housing facilities for students and their spouses and children, staff housing facilities, and school-owned and operated dormitory or residence halls occupied in whole or in part by students who belong to fraternities, sororities, or other campus organizations.

Prior to the recent decision in the Carpenters case, Illinois courts tended to hold that vocational training programs, such as the one operated by applicant, did not qualify for exemption under the applicable versions of Section 200/15-35. *See, Coyne Electrical School v. Paschen*, 12 Ill. 2d 387 (1957); Board of Certified Safety Professionals of the Americas v. Johnson, 112 Ill. 2d 542 (1986); Winona School of Professional Photography v. Department of Revenue, 211 Ill. App. 3d 565 (1st Dist. 1991). The Carpenters court reaffirmed that line of decisions by holding, in essence, that the subject property did not qualify for exemption from 1989 real estate taxes under the then-applicable version of Section 15-35 because the current state of Illinois law did not support extending the "school" exemption to vocational education programs.⁵ Carpenters, *supra*, at 615-616.

5. A detailed exposition of the court's rationale can be found at Carpenter, *supra*, at 611-614. In the interest of brevity, that exposition is hereby incorporated by reference herein.

The parties herein have stipulated that the facts articulated in Carpenters remained the same throughout each of the seven tax years currently at issue, with the exception of the curriculum updates submitted as Stipulation Ex. No. 6 and the budget information submitted as Applicant Ex. Nos. 7-13. (Stipulation, pp. 2-3. Tr. p. 7). Therefore, the only real issue in this case is whether the newly-submitted curriculum updates and budget information alter any of the conclusions set forth in Carpenters. For the following reasons, I conclude they do not.

The curriculum updates (Applicant Ex. No. 6) show that applicant increased the math and O.S.H.A. components of its nine-week pre-apprentice training program throughout tax years in question. However, this training was not applicant's primary mechanism for achieving the principal objective of its overall program, which was to enhance the carpentry skills of those enrolled through on-the-job training at locations *other than* the subject property. Carpenters, *supra*, at 611-612.

It is well established that the word "exclusively," when used in Section 15-35 of the Property Tax Code and other exemption statutes, means the primary use to which real estate is put, not any incidental use or uses. Pontiac Lodge No. 294, A.F. and A.M. v. Department of Revenue, 243 Ill. App.3d 186 (4th Dist. 1993). Consequently, incidental uses are not determinative of exempt status. *Id.*

The pre-apprentice training program conducted at the subject property was, per the above analysis, but an incidental component of a larger program that was primarily geared toward providing vocational training at sites other than the one at issue herein. Therefore, I respectfully disagree with applicant's suggestion that the curriculum updates justify a result different than the one reached by the appellate court in Carpenters.

With respect to the budget updates, (Applicant Ex. Nos. 7-13), I note that "[w]hile the [Chicago] Board of Education and the state may well have saved money by discontinuing the carpentry program in question, they were not obligated to provide such a program even if no enterprise in the private sector had undertaken to provide them." Carpenters, *supra* at 611. This statement provides an accurate statement of governing principles for the assessment year at issue

in Carpenters, (1989), because the General Assembly had not enacted any legislation requiring that carpentry apprentice programs be offered in the tax-supported schools of this State. *Id.*

The parties have not cited, and my research fails to disclose, that the General Assembly enacted appropriate legislation during the tax years currently at issue. Absent such legislation, neither the State nor the CBE were under any obligation to provide the type of training available in applicant's programs throughout those tax years. Hence, it was factually and legally impossible for applicant's training program to relieve the State's financial burden during that time. Therefore, the property wherein applicant conducted the pre-apprentice portion of that training should not receive the benefit of exempt status for those tax years.

WHEREFORE, for all the above-stated reasons, it is my recommendation that real estate identified by Cook County Parcel Index Number 08-34-200-019 not be exempt from 1990, 1991, 1992, 1993, 1994, 1995 and 1996 real estate taxes.

August 6, 1999

Date

Alan I. Marcus
Administrative Law Judge